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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,973	02/02/2004	John Wootton	2/1219US	8988
22822	7590	03/02/2006	EXAMINER	
LEWIS, RICE & FINGERSH, LC			PHAM, MINH CHAU THI	
ATTN: BOX IP DEPT.			ART UNIT	PAPER NUMBER
500 NORTH BROADWAY			1724	
SUITE 2000				
ST LOUIS, MO 63102				
DATE MAILED: 03/02/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/769,973	WOOTTON ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Minh-Chau T. Pham	1724

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

- 1) Responsive to communication(s) filed on 04 January 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

- 4) Claim(s) 1-20 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-20 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Claim Rejections - 35 USC § 102***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4 and 7-18 and 20 are again rejected under 35 U.S.C. 102(b) as being anticipated by either Wachter (3,775,949) or Grandjean et al (5,900,043).

Wachter teaches a filtration unit which supplies a room with air purified from poisonous substances (see Abstract) comprising a first air flow path (16) wherein air passes through the filtration unit without passing through a filter, a second air flow path (8) wherein air passes through the filtration unit through a filter (5), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 1, lines 52-59). Grandjean et al teach a filtration unit comprising a first air flow path (see air arrow flowing through pipe 22) wherein air passes through the filtration unit without passing through a filter, a second air flow path (see air arrow flowing through pipes 4 & 5) wherein air passes through the filtration unit through a filter (3), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 3, line 62 through col. 4, line 2, col. 4, lines 27-29).

Claim 8 calls for the second air flow path and the third air flow path being symmetrical. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the second and third air flow paths being

symmetrical since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

The phrase "a nuclear, biological, and chemical (NBC) filtration unit for use with a portable environmental control unit (ECU)" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951). In addition, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 5 and 6 are again rejected under 35 U.S.C. 103(a) as being unpatentable over either Wachter (3,775,949) or Grandjean et al (5,900,043), in view of either Rick et al (5,925,172).

Claims 5 and 6 call for the command of the controller being sent via wireless technology. Rick et al disclose a control system can be a wireless device (col. 6, lines 36-38). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a control system being wireless as taught by

either Rick et al in the apparatus of either Wachter or Grandjean et al since the wireless device would be a convenience to the user to operate the system without lots of wiring attached.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Wachter (3,775,949) or Grandjean et al (5,900,043), in view of the German Patent (DE 2312303 A).

Claim 14 calls the filter to be a carbon bed filter. The German reference discloses the filter can be a carbon filter bed (see Derwent abstract). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a carbon bed filter in the apparatus of either Wachter or Grandjean et al since it is well known in the art that the carbon bed filter is an effective adsorbing medium for any gaseous radioactive materials.

***Response to Amendment***

Applicant's arguments filed on January 4, 2006 have been fully considered but they are not persuasive.

Applicant argues that none of the cited prior arts discloses a filtration unit with two separate flow paths one is filtered and one is unfiltered to an ECU and a filter being a NBC filter. The Examiner respectfully disagrees. As argued before, the phrase "a nuclear, biological, and chemical (NBC) filtration unit for use with a portable environmental control unit (ECU)" has not been given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained

description of the structure not depending for completeness upon the introductory clause. Kropa v. Robie, 88 USPQ 478 (CCPA 1951). In addition, it has been held that a recitation such as "NBC" filter with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ 2d 1647 (1987).

The Examiner respectfully points out that both references Wachter and Grandjean et al clearly teach: Wachter teaches a filtration unit which supplies a room with air purified from poisonous substances (see Abstract) comprising a first air flow path (16) wherein air passes through the filtration unit without passing through a filter, a second air flow path (8) wherein air passes through the filtration unit through a filter (5), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 1, lines 52-59). Grandjean et al teach a filtration unit comprising a first air flow path (see air arrow flowing through pipe 22) wherein air passes through the filtration unit without passing through a filter, a second air flow path (see air arrow flowing through pipes 4 & 5) wherein air passes through the filtration unit through a filter (3), and a controller allowing the filtration unit to switch from passing air through the first air flow path to the second air flow path and vice versa without the filter being removed from the filtration unit (see col. 3, line 62 through col. 4, line 2, col. 4, lines 27-29), as read on the broad language of the claims.

Regarding to the argument of a location of the blower, both the Wachter and Grandjean et al references inherently teach the blower or fan means for blowing the air because without a blower means, how can the air flow through the system?

Regarding to the argument of a NBC filter being a carbon bed filter, the Examinew newly introduces the German Derwent as the secondary reference in combination with Wachter or Grandjean et al under the 103 rejection to show the filter can be a carbon filter bed (see Derwent abstract). It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a carbon bed filter in the apparatus of either Wachter or Grandjean et al since it is well known in the art that the carbon bed filter is an effective adsorbing medium for any gaseous radioactive materials.

Applicant's arguments with respect to claims 1-20 have been thoroughly considered but are moot in view of the new ground(s) of rejection, as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Minh-Chau T. Pham whose telephone number is (571) 272-1163. The examiner can normally be reached on Mon/Tues/Thur/Fri 7:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on (571) 272-1166. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Minh-Chau Pham**

**Patent Examiner**

**Art Unit: 1724**

**February 28, 2006**